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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------------|------------------|
| 10/622,349 | 07/18/2003 | Frederick John Rice | 35332.12.1 | 4817 |
| 7590 | 02/22/2006 | | | |
| James R. Haller Fredrikson & Byron, P.A. 4000 Pillsbury Center 200 South Sixth Street Minneapolis, MN 55402-1425 | | | EXAMINER KIM, CHRISTOPHER S | |
| | | | ART UNIT 3752 | PAPER NUMBER |

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,349

Applicant(s)

RICE ET AL.

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 47-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 47-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on November 21, 2005 and December 23, 2005 have been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

3. Claims 47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Migliozi (4,081,139).

Migliozi discloses a soap dispenser comprising: a retaining means comprising a body 50; attaching means comprising an L-shaped member having an arm 28, 32 (the arm having a clamp 18) and a shank 20; a pivotal member 38, 40, 42, 44, 46 (the portion of spokes 38, 40, 42, 44, 46 radially inward of basket 50); an external projection 38, 40, 42, 44, 46, 36 (the portion of spokes 38, 40, 42, 44, 46 radially outward of basket 50 and rim 36).

Claim Rejections - 35 USC § 103

4. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliozi (4,081,139) in view of Bishop (855,428).

This rejection is provided in anticipation of applicant's argument that it is not a fair reading of Migliozi to separate the spokes 38, 40, 42, 44, 46 into radially inward and outward portions relative to basket 50 to define a pivotal member and an external projection, respectively. If so, it can be argued that Migliozi's body lacks an external projection mounted to and extending outwardly of the body. Bishop shows, in figure 1, an external projection on body 5. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the external projection of Bishop to the basket of Migliozi to provide a gripping surface so that the basket can be easily manipulated.

5. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliozi (4,081,139) in view of Moss (2,647,797).

Migliozi discloses the limitations of the claimed invention with the exception of the cylindrical soap and the body having a post. Moss discloses a cylindrical soap 35 and body 21 having a post 28. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the body 50 of Migliozi with the body of Moss to dispense scented substance, a water softener, or a medicated substance (Moss, col. 1, lines 3-10).

6. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miglioizzi (4,081,139) in view of Bishop (855,428) as applied to claims 47 and 48 above, and further in view of Moss (2,647,797).

Miglioizzi in view of Bishop discloses the limitations of the claimed invention with the exception of the cylindrical soap and the body having a post. Moss discloses a cylindrical soap 35 and body 21 having a post 28. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a post to the body 50 of Miglioizzi as taught by Moss to dispense scented substance, a water softener, or a medicated substance (Moss, col. 1, lines 3-10).

Response to Arguments

7. Applicant's arguments filed December 23, 2005 have been fully considered but they are not persuasive.

Applicant argues that Miglioizzi's arrangement requires a water outlet that extends at least the diameter of the circular support. Applicant further argues that "this arrangement is in clear contrast to the device of the present application, where the various structural features allow for the device to be mounted and located near a water outlet or tap that extends only a short distance out from a wall." Applicant's argument is not commensurate with the claimed invention.

Applicant argues that Miglioizzi's shank is not fixedly attached to the arm, and in the present invention, the arm and shank are unable to move relatively to each other at all. While "unable to move relatively to each other at all" is one possible definition of

“fixedly attached,” it is not the only definition. Webster’s II (copyright 1984) defines “fixed” as being set firmly in position. Applicant’s definition of “fixedly attached” is a narrower interpretation and not the broadest reasonable interpretation.

Applicant argues that “it is only the pivotal member at the lower end of the shank that is able to move so as to enable pivoting of the body into and out of the water stream from the tap.” Applicant’s argument is not commensurate in scope with the claimed invention.

Applicant argues that Miglioizzi’s body is not directly mounted to the pivotal member. Miglioizzi’s body 50 is directly mounted to pivotal member 38, 40, 42, 44, 46 by hook 54.

Applicant argues that Miglioizzi’s device is cumbersome and is not discrete or compact. Applicant’s assertion of size and cumbersome arrangement of Miglioizzi’s device is unsupported speculation. Additionally, the term “proximally” is a relative term which is undefined by applicant’s specification or claims. It has been considered as a broad term rather than an indefinite term.

Applicant argues that Miglioizzi’s handle is located remotely from the baskets. Any element that can be manipulated by the hand, i.e. gripped by the hand for manipulation, has been considered to meet the limitation of a “handle.” The claim only further defines “handle” as “the external projection defining a handle to facilitate pivotal movement of the body.”

Finally, Miglioizzi discloses, in column 2, lines 44-53,

One example, as depicted, of the manner in which said bearing means 22 may be provided in mounting bracket 16

in particularly rudimentary and economical manner is to simply double over the stock from which the mounting bracket 16 is fabricated at the second-mentioned extremity thereof and to form mating, generally semicircular grooves in the respective inner surfaces thereof to enable the tight grasping and rotatable support of the support shaft 20 therebetween.

In column 3, lines 8-12, Miglioizzi further discloses

For reasons of simplicity and economy of manufacture, the support spokes are preferably attached to the support shaft 20 and support rim 36 by the simple wrapping of the ends of the spokes around said shaft and rim as shown...

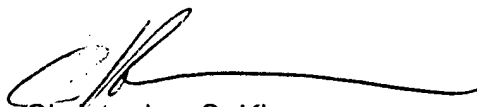
The connection 22 between bracket 32 and shaft 20 is similar in construction to the connection between spokes 38, 40, 42, 44, 46 and shaft 20. In both instances, the bracket 32 and spoke 38, 40, 42, 44, 46 are wrapped around shaft 20. While, in normal operation, the spoke 38, 40, 42, 44, 46 does not pivot on shaft 20, the spoke has the ability to pivot about shaft 20 because of the similar construction as connection 22.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim
Primary Examiner
Art Unit 3752

CK